Dated: March 14, 1995

Case No.: 94-ERA-32

In the Matter of

CHARLES J. BOYTIN
Complainant

v.

PENNSYLVANIA POWER AND LIGHT COMPANY
Respondent

David P. Tomaszewski, Esq.
Wilkes-Barre, PA
For the Complainant

Susan E. Spangler, Esq.
Allentown, PA
For the Respondent

Before: JEFFREY TURECK
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This is a case arising under the Energy Reorganization Act of 1974 ("the Act"), 42 U.S.C. 5851, and the applicable regulations codified at 29 C.F.R. Part 24. A complaint was filed with the Department of Labor by Charles J. Boytin ("complainant") who claimed that he received an unfavorable appraisal review for the year 1992 from his supervisor at Pennsylvania Power and Light Co. ("respondent") after speaking with the Nuclear Regulatory Commission ("NRC") regarding alleged safety violations occurring at respondent's Susquehanna nuclear power plant. Complainant supplemented this charge when he received his 1993 evaluation which he likewise characterized as adverse and retaliatory. The complaint was investigated by the District Director of the Employment Standards Administration, Wage and Hour Division, who concluded that discrimination was a factor in the action taken by the respondent in respect to the complainant. Respondent

appealed this determination and requested a hearing. The hearing was originally set for September 19, 1994 in Philadelphia,

Pennsylvania but was rescheduled for October 27-28, 1994 and relocated to Wilkes-Barre, Pennsylvania. The record was closed with the filing of post-hearing briefs on January 27, 1995.

Complainant's annual evaluation was less favorable in 1992 and 1993 than it had been in previous years. His appraisal rating dropped from a two to a three which, according to complainant, has adversely affected his salary. Complainant alleges that this action was taken in response to a report he made to the NRC which contained serious allegations about his supervisor, Darryl Zdanavage, and an assistant security shift supervisor, Ronald Kishbaugh, and triggered an on-going investigation by the NRC.

Respondent contends that complainant's 1992 and 1993 appraisal ratings were fair evaluations of complainant's job performance in those years based on criteria articulated by Zdanavage when he became supervisor of complainant's shift, not retaliation for charges he made to the NRC.

Findings of Fact and Conclusions of Law[1]

a. Background

Respondent operates the Susquehanna steam electric station, a nuclear power plant, located north of Berwick, Pennsylvania (TR 24). As mandated by the NRC, respondent's Susquehanna plant maintains a security force to protect the site (TR 126). This security force is organized into four sections, security operations, training, support, and site access, which report to the manager of nuclear security, Richard Stolter (TR 127-28). Security operations, specifically, is divided into five shifts designated A-E (TR 128; EX 1). Each shift is headed by a supervisor; beneath him or her, in order of rank, are the assistant shift supervisor, controllers or senior security officers, and finally, level 2 and level 1 security officers (TR 129).

Complainant lives in Hunlock Creek, Pennsylvania (TR 15). He was hired by respondent on September 4, 1982 as a temporary security officer at its Susquehanna plant and was made a permanent employee, assigned to the "B" shift, shortly thereafter (*id.*). He remained in this position until November of 1984 when he was promoted to senior security officer (TR 16). As a senior security officer, complainant receives reports from level 1 and 2

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security officers, ensures that the computer system is fully functioning, and dispatches security officers in response to emergencies (TR 22-24).

A security officer's performance is evaluated annually, usually in March,[2] by his or her immediate supervisor; thus, as a controller, complainant is evaluated by his security shift supervisor (TR 135). Performance evaluations document an employee's achievements and shortcomings during a given year and

are also taken into account when considering an employee for promotion and determining an individual's merit increase in salary (TR 135). A poor evaluation may also cause a person to be laid off if there are personnel cut-backs at the plant (TR 220). Employees are rated on a scale of one to six, one being the best under the current system (TR 17); employees actually receive fractional results which are rounded to the nearest whole number rating (EX 2, at 4). For example, complainant received a fractional score of 3.23 which was rounded to three. Had his fractional score been 3.5 he would have received a rating of four. Previously, the scale had been reversed, and six was considered outstanding (TR 135).

After a supervisor has evaluated an employee, the appraisal is sent up the chain of command where it is reviewed, commented upon and signed by the next most senior individual (*id.*). It is returned to the preparer who in turn discusses it with the employee who is the subject of the evaluation (TR 136). The employee has an opportunity to ask questions and make written comments before signing it (*id.*; TR 141). If negative comments are made by the employee, the evaluation is again forwarded up the chain of command for a second review (TR 142). If an employee's annual evaluation shows a "significant" negative change in that individual's performance, an interim appraisal or mid-year review will be made (TR 139). A drop from a level two to a level three rating is not considered a significant change in performance by the supervisors who testified (*see* TR 138, 169, 203-04). To illustrate the type of situation necessitating interim reviews, respondent produced the evaluations of a security officer level 2 whose appraisal rating dropped from level three in 1991 to level five in 1992 (EX 41, 42). Every several months she was re-evaluated and work plans were formulated to return her performance to the level of a competent worker (EX 43, 44, 45).

An employee's appraisal rating is designed to have a two-fold effect on his or her salary. The rating determines an employee's target salary range (expressed in terms of percentages

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called compa-ratios) and his or her actual salary (CX 15, at 6). Respondent's salary scale is designed around the midpoint salary which has been designated as 100% (*id.*, at 7). The midpoint salary is the salary appropriate for a "fully competent" worker (*id.*) Thus, employees who are rated very good or outstanding have target salary ranges above the midpoint. For example, the level two target salary range is 104-112% of the midpoint salary on respondent's salary scale (*id.*, at 7). Stolter testified that employees would have to receive a level two rating for four to five years before they would be expected to attain their salary range (TR 217). Ideally, each year an employee receives a merit award which brings him or her closer to the midpoint or their target salary range if it is above the midpoint. The amount of a merit award is determined by an employee's immediate supervisor who takes into account both the employee's target salary range and the fractional score on his or

her evaluation (EX 2, at 4). Recently, though, there has been a decrease in the size of merit awards because the deregulation of the utility industry has caused respondent to tighten its budget (TR 189-90).

After having received what would be an appraisal rating of three under the current system in 1988, complainant was consistently rated as a level two performer from 1989 through 1991, first by John Paciotti, a security shift supervisor who at the time was an assistant security shift supervisor (TR 372, 376-77), and then Freda Burd, also a security shift supervisor who is currently on long term disability with the company (TR 52-53). According to John Paciotti's testimony, complainant warranted a level two rating in both 1989 and 1990 because he trained two individuals for senior security officer positions, served on a task force that addressed personnel substitutions, and voluntarily distributed overtime in addition to competently performing his normal duties (TR 374-80). Paciotti believes that all employees should start out at level three but can earn higher ratings through their achievement in a given year (*see* TR 426). Freda Burd, on the other hand, while also rating complainant at level two, approached performance evaluations with a different philosophy. She began by reviewing past performance reports to have a basis from which to judge an employee's work over the year (TR 71-72). Rather than awarding only those employees who took on additional responsibilities during a particular year with level two ratings, she believed that level two ratings were not unusual and, in fact, expected by management who looked for high levels of performance (TR 57). Personally, Burd focused on the amount of sick time used by employees and their phone etiquette; she referred to these areas as her "pet peeves" (TR 69-70). About the complainant specifically, Burd stated that he was an

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outstanding employee (TR 56); they got along well together and shared many of the same opinions (*id.*). She did state, though, that co-workers whose viewpoints differed from complainant's would not characterize him as a team player like she did (*id.*).

In January 1992, Darryl Zdanavage became supervisor of the "B" shift (TR 21). Like Paciotti, Zdanavage believed everyone on his shift who competently performed his or her job rated a level three; higher ratings were to be awarded to individuals who exceeded their job requirements and assumed added responsibilities (TR 477). From competent employees, Zdanavage expected honesty, open communication, minimal use of sick time for bona fide medical problems, a proper attitude, neatness and an appropriate appearance (TR 440). Zdanavage also took note of the number of overtime hours employees worked (TR 388). Zdanavage testified that immediately upon assuming this position he encountered problems with the complainant. He contends that complainant disagreed with the sick time policy, complained about his salary in regard to the pay scale's midpoint, acted as the shift spokesman in regard to security officers' disagreements with the assistant shift supervisor, Ron Kishbaugh, and reacted

bitterly when his paperwork was cited for grammatical errors (TR 457-60). Yet his relationship with the complainant was amicable through September of that year (TR 20-21), and the only deficiency brought to the complainant's attention was complainant's self-assumed role as a shift spokesman (TR 27-28). Complainant actually received high praise from Zdanavage for having admitted to leaving a door unsecured because this mistake probably would have gone undetected but for complainant's honesty (TR 26).

On September 20, 1992, complainant reported Zdanavage and Kishbaugh to Scott Barber, the on-site NRC representative, for allegedly violating NRC regulations (TR 28, 32-33). Among the most serious allegations were that Zdanavage had given the complainant an emergency drill time line two weeks before a drill exercise, cheated on a recertification exam by instructing the complainant to change an answer, and by-passed site entry procedures (TR 28-30). He also reported Kishbaugh for removing property from the facility (TR 31). Rumors began circulating around the plant that someone had made a report to the NRC (TR 306).[3] An internal investigation was launched and when confronted by Brian McBride, a training officer, complainant admitted to speaking with the NRC (TR 35-36).[4] In the meantime, complainant had been interviewed by the NRC at his home and had spoken to another NRC representative numerous times over the telephone after the NRC launched a full-scale investigation (TR

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33). By the end of October 1992, everyone in the security section was aware of complainant's report to the NRC (*see* TR 104, 116, 306, 522-23).

Despite his knowledge of the allegations made against him by the complainant, Zdanavage remained complainant's shift supervisor and evaluated him, for the year 1992, at level three after rounding down his 3.23 fractional score (EX 56; TR 464). He noted weaknesses in complainant's interpersonal and communication skills and under dependability complainant was faulted for using 100 hours of sick leave (*id.*). Forty minutes after signing this appraisal, complainant decided to exercise his right to make comments (TR 478). He questioned Zdanavage's statement that he becomes bitter when criticized and exchanges favors such as volunteering for overtime at Christmas in order to gain support during confrontations (EX 56; TR 44-49). These comments were forwarded to Richard Stolter who discussed them with complainant and agreed with Zdanavage's review (EX 56). Stolter, moreover, testified that although he is not aware of any serious deficiencies in complainant's performance, he has had concerns about complainant's attitude and conduct for several years (TR 148).[5] Yet, prior to this evaluation there is no documentation that would indicate that complainant's supervisors were displeased with his attitude (TR 221).

Meanwhile, complainant contends and other witnesses testified[6] that Zdanavage's conduct changed after complainant's report to the NRC (TR 38-41, 104, 116-17). Post

checks--rounds conducted twice during a 12 hour shift by shift supervisors and assistant shift supervisors--became extremely brief (TR 38), complainant's work was increasingly criticized (TR 39), and both Zdanavage and Kishbaugh responded slowly if at all to requests by complainant to use the restroom (TR 40-41). Kishbaugh admits post checks were shortened but denies any failure on his behalf to respond to requests by complainant to use the restroom (TR 346-48).

Zdanavage's evaluation of the complainant for 1993, though, remained at level three (EX 57). Zdanavage stated that complainant's sick time usage still exceeded the company's goal of 40 hours per employee, and complainant never volunteered for overtime (*id.*). Prior to completing this evaluation in its final form, Zdanavage took the added precaution of having Stolter and Roland Ferentz, security operations supervisor, review it in draft form; both agreed with the appraisal (TR 276; 481-82). Complainant again made negative comments. Complainant contends that Zdanavage lowered his dependability rating despite the fact

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he improved his sick time usage by 29.5 hours because Zdanavage added the criteria of overtime as one of his considerations when evaluating an employee (TR 73). Most overtime is voluntary, and there has never been any problem filling it (TR 199); complainant prefers not to volunteer for overtime because he has a family (TR 74-75). This time a meeting was held between complainant, Zdanavage, Bob Byram, senior vice president of the nuclear department, and Bob Gombos, vice president of human resources and development, where it was decided that a plan should be developed for Zdanavage and complainant to improve their working relationship (TR 177-78).

As supervisor of the "B" shift, Zdanavage also evaluated two other senior security officers and one assistant shift supervisor (TR 439). Although in fractional terms, these individuals received higher scores than the complainant, their appraisal ratings were all level three (TR 248). In fact, Zdanavage has never given a level two appraisal rating (TR 477). Even though complainant's fractional score was 3.23 on both disputed appraisals, he received a merit increase of 4.4% in 1992 and 3.9% in 1993 (EX 7). His salary continued to approach the midpoint; in 1993 it was 99.3% and the following year it was 99.7% (*id.*). Only two employees in complainant's salary group had reached the midpoint by 1993, and they had both received fractional ratings that year of 2.51 (*id.*).

Complainant contends that Zdanavage gave him a level three rating for both the years 1992 and 1993, which affected his salary, in retaliation for his report to the NRC. Although all the other senior security officers received level three ratings, complainant argues that because his fractional score, 3.23, was the lowest given by Zdanavage his merit increase was less than that of his co-workers. More importantly, had he received a level two evaluation both those years, his salary should have been within the 104-112% salary target range since he would have

held a level two rating for four years. On this basis, complainant theorizes that he lost $1811.59 in 1992 and $1536.92 in 1993 in actual wages (TR 87). Not only was his actual salary affected, complainant argues that he also lost approximately $1500 in company shares and contributions to the savings plan (TR 88). Respondent states that complainant was evaluated fairly and that he was not harmed by the one level drop in his rating. There was no guarantee that complainant's salary would have reached the 104-112% salary range since merit increases have decreased recently. Moreover, there is no exact correlation between an employee's fractional rating score and the amount of his or her merit increase since other factors are taken into

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consideration by a supervisor.

b. Burden of Proof

Initially, in cases brought under the Act and other similar statutes protecting whistleblowers, it is the complainant's burden to make a *prima facie* showing that:

> 1. The complainant engaged in conduct protected by the applicable statute;
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> 2. The party charged with unlawful discrimination knew of the employee's protected activity;
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> 3. The complainant was subjected to adverse action; and
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> 4. The adverse employment action was motivated, in whole or in part, by the employee's protected activity.

See, e.g., Dartey v. Zack Co., 82-ERA-2 (April 25, 1983); *McCuiston v. TVA*, 89-ERA-6 (Nov. 13, 1991); *see also Mackowiak v. University Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984). If the complainant can establish each of these elements, then the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for its action. I find that the complainant has failed to meet his burden of proof.

c. Protected Activity

Complainant claims that his communications with the NRC while employed by the respondent constitutes protected activity under the Act.

Protected activity is defined at 29 C.F.R. §24.2(b). Under the regulations, if an employee:

> (1) Commenced, or caused to be commenced, or is about to commence or cause to be commenced a proceeding under [the Act];
>
> (2) Testified or is about to testify in any such proceeding; or

(3) Assisted or participated, or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of [the Act],

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he has engaged in protected activity.

It is clear that the complainant engaged in activity protected by the Act. Whistleblower statutes are designed to protect those who give information to the government in furtherance of enforcing the acts in question. *N.L.R.B. v. Scrivener*, 405 U.S. 117 (1972). An action does not have to have been instituted against the employer under the Act to find that an employee's giving of information to a government agency is protected activity. *Id.*, at 121-22.

In the present case, complainant reported alleged regulatory violations at the Susquehanna nuclear power plant to the NRC. This activity constitutes assistance in an action to carry out the purposes of the Act, the third definition of protected activity. Under *DeFord v. Department of Labor*, 700 F.2d 281, 286 (6th Cir. 1983), the employee does not actually have to participate through testimony or otherwise in a formal proceeding. Instigating an investigation by the commission or participating in one is enough to satisfy the requirements for protected activity. Therefore, complainant's initial report to the NRC and subsequent cooperation with their investigation qualifies as protected activity.

d. Respondent's Knowledge of the Protected Activity

The second element that the complainant must prove is that the employer knew about the protected activity. *Dartey, supra.* The employer cannot retaliate for an employee's participation in protected activity if it was not aware that the protected activity occurred.

In this case, complainant, by providing the NRC with information about alleged violations under their regulations, was engaged in protected activity. Plant employees including complainant's superiors were aware of complainant's report. He first spoke with the on-site NRC representative, Scott Barber, while at his post on September 20, 1992. Barber had gained access to the security control center using his access card which, at the Susquehanna plant, creates a computerized log detailing who enters the area and when. Thus, a record containing the date and time although not the contents of this meeting exists. Rumors also began circulating throughout the plant after this meeting and Stolter, who allegedly demanded to know why complainant and Barber met for an hour and 45 minutes, ordered an in-house investigation. When questioned, complainant admitted that he made a report to the NRC; complainant personally

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related the details of his report to Roland Ferentz and Brian McBride, and Ferentz, in turn, told Stolter and most likely Zdanavage by the end of October 1992 (TR 306-311).[7] Zdanavage claims not to have known the specifics of complainant's report until 1993 but his observed attitude towards complainant indicates that he knew at least that complainant's report contained allegations against him. Moreover, Kishbaugh knew specifically that he was implicated in complainant's report making it likely that Zdanavage had similar knowledge (TR 345-6). Thus, respondent had actual knowledge of complainant's protected activity.

e. Adverse Action

Since respondent knew of the protected activity, the third element needed to establish a *prima facie* case of retaliatory discrimination is that an adverse employment action occurred. Complainant alleges that the drop in his appraisal rating from a two to a three in March 1993 constituted an adverse employment action. Complainant failed to present evidence to support this contention.

The word "adverse" is defined as "unfavorable or harmful." *Webster's New World Dictionary* 20 (2d ed. 1986). Clear examples of adverse employment actions include dismissal, demotion, or an involuntary transfer. *See Mandreger v. Detroit Edison, Co.,* 88-ERA-17 (Mar. 30, 1994); *Nichols v. Bechtel Construction, Inc.,* 87-ERA-44 (Oct. 26, 1992); *English v. General Electric Co.,* 85-ERA-2 (Feb. 13, 1992). A performance evaluation can also constitute an adverse employment action. For instance, in *Bassett v. Niagara Mohawk Power Corp.,* 85-ERA-34 (Sept. 28, 1993), complainant's performance was characterized as borderline between meeting expectations and not meeting expectations; it was further stated in the evaluation that if complainant's performance did not improve he might receive an unsatisfactory rating. The Secretary held that these negative comments and threats affected the terms of complainant's employment, and thus the performance evaluation was considered an adverse employment action. *Id.*

This case is clearly distinguishable from *Bassett*. For receiving a level three performance rating was not unfavorable; was not harmful to complainant's career or salary; and did not affect the terms of his employment in any manner.

A level three appraisal rating is considered "good" (EX 2, at 3). In descriptive terms, a level three employee's

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"[a]ccomplishments consistently [meet] position requirements and performance expectations" (*id.*). Complainant's evaluations for the years 1992 and 1993 did not contain negative comments as described in *Bassett*. Zdanavage rated complainant fully competent, and although he noted areas in which complainant's attitude could improve, the overall evaluation was clearly positive.[8] Since the purpose of performance evaluations is to "improve performance by highlighting areas of

strength that can be effectively applied and weaknesses that need to be corrected" (EX 2, at 1), it is unrealistic to expect to receive an entirely favorable performance evaluation; there is no suggestion in complainant's evaluation that he was in danger of dropping another rating level.

Likewise, respondent did not consider a single level decrease in an employee's rating to be significant when that employee's performance is still considered good. The appraisal guidelines state that "changes in performance levels are to be expected" (*id.* at 3). Such a change may be caused by having fewer opportunities to excel in a given year, working under a new supervisor, or receiving a promotion where job duties change and an employee must develop new skills (*id.*). Complainant's rating had previously dropped from what is a two on the current scale to a three when he was promoted from a security officer level 2 to a senior security officer. In this instance, complainant's rating dropped after Zdanavage became his supervisor in January 1992. Again, Zdanavage believes that all employees who competently perform their jobs merit a level three. As noted above, Zdanavage has never given a level two rating, and management is aware of his evaluation philosophy, characterizing him as a "tough grader" (TR 205).

Complainant argues that by receiving a level three rating rather than a level two rating for the years 1992 and 1993, his salary was adversely affected. However, the evidence fails to show that the complainant's salary increased any less than it would otherwise have increased due to his level three appraisals in 1992 and 1993. First, there was never a guarantee that complainant would have attained the target salary range for a level two employee if he received a level two rating for the years 1992 and 1993. No written company policy exists mandating attainment of the target salary range after a specific number of years at a given rating. There is only testimony that the target salary range should be reached after four to five years at the same rating level. Before his 1992 evaluation, complainant's salary was 98.9% of the midpoint (EX 7). To attain the 104-112% salary range his salary would have had to increase by at least

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5.1%. Since respondent decreased the size of merit awards, it is unlikely that complainant would have attained this salary range in one or two years even if he continued to receive level two appraisals. Only two employees in complainant's salary group have even reached the midpoint, let alone a salary four percent above the midpoint.

Second, although an employee's fractional rating is considered by his or her supervisor when awarding merit increases, that rating is not the only factor considered in awarding raises. In 1992, complainant received a merit increase of 4.4% or $33 per week (EX 7). Yet, in 1990 and 1991 when complainant received level two ratings and the average merit increase awarded by respondent was larger, complainant's salary only increased by $37 and $39, respectively (EX 10). Moreover,

in 1993, complainant received a higher merit increase than the other two employees who received the same fractional rating; complainant's increase was 3.9% whereas the other two employees with fractional ratings of 3.23 only received increases of 3.1% and 3.8% (EX 7). Further, another employee received a higher fractional rating, 3.18, than complainant but a lower merit increase, 3.7% (*id.*). Similarly, an employee with a fractional rating of 3.15 was only awarded a merit increase of 3.8% (*id.*). Thus the evidence fails to prove that complainant's salary was adversely effected by his performance appraisals in 1992 and 1993.

Accordingly, there is no evidence that the decrease in complainant's appraisal rating from level two to level three had any negative consequences, and complainant has failed to establish that his 1992 and 1993 appraisals constituted an adverse action. Therefore, complainant has faled to prove one of the elements of his *prima facie* case, and his claim must be dismissed.

Furthermore, even if the drop in complainant's appraisal rating can be considered a *per se* adverse action, the evidence fails to prove that this action was motivated by complainant's protected activity. Although it may be difficult to perceive that Zdanavage rated the complainant fairly, considering the serious nature of complainant's charges against Zdanavage, there is absolutely no evidence to the contrary. Zdanavage clearly articulated his expectations as a supervisor to the entire shift. Complainant, in both 1992 and 1993, greatly exceeded the company's goal of 40 hours of sick time usage per employee per year. Likewise, his volunteer overtime hours were the next to lowest in 1992 and the lowest in 1993. There is also no evidence

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that complainant performed duties in addition to his normal job requirements as he had in previous years when he received level two ratings. More importantly, Zdanavage rated *all* senior security officers at level three; he has never given a level two rating. Thus, his level three ratings for the complainant are consistent with every other evaluation Zdanavage has given.

Accordingly, complainant has not met his *prima facie* burden in regard to the elements which form the basis of his complaint. The theory of complainant's case is that respondent gave complainant poor evaluations in 1992 and 1993 in retaliation for his report to the NRC. In fact, complainant's evaluations for those years were not adverse, and were not motivated by the protected activity in any event. Since respondent did not discriminate against the complainant, the complaint must be dismissed.

RECOMMENDED ORDER

It is recommended that the complaint of Charles J. Boytin for discrimination under the Energy Reorganization Act be dismissed.

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JEFFREY TURECK
Administrative Law Judge

SERVICE SHEET

Case Name: Charles J. Boytin

Case No.: 94-ERA-53

Title of Document: Recommended Decision and Order

A copy of the above-titled document was mailed to the following individuals on March 14, 1994.

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[ENDNOTES]

[1] Citations to the record of this proceedings will be abbreviated as follows: EX--Respondent's Exhibit; CX--Complainant's Exhibit; TR--Hearing Transcript.

[2] Although respondent evaluates its employees' performance annually, appraisal ratings do not commence at the beginning of a year, but rather generally cover the period from March of one year to March of the following year. For purposes of this decision, an appraisal will be referred to by the year in which the rating period began. Thus, complainant's 1992 evaluation covered the period March 1992 to March 1993.

[3] Complainant's meeting with Scott Barber was never secret. Barber gained access to complainant's post by key carding through a door (TR 32-33). This action created a computerized record that placed Barber and the complainant together at the plant for almost two hours (*id.*). Barber was later questioned by Stolter regarding the nature of their conversation (TR 33).

[4] This internal investigation was discontinued by Stolter when he discovered that the NRC was conducting its own investigation (TR 163).

[5] For example, complainant proposed that training days be Monday through Thursday, but Stolter opted to conduct training Tuesday through Friday because many holidays and hunting days fall on Mondays. Complainant was upset with this decision and voiced his displeasure directly to the vice president. Apparently complainant had been so confident that his proposed schedule would be adopted that he told his wife accept a similar shift work schedule (TR 151-52).

[6] Erika Oswald worked at the Susquehanna plant as a security officer from 1989 to 1994 (TR 99). She testified that Zdanavage and Kishbaugh's attitude towards the complainant changed after complainant's report to the NRC became common knowledge (TR 104). Donald Houseknecht, a level 2 security officer, corroborated her testimony (TR 116-17).

[7] Ferentz testified that he "may have" discussed with Zdanavage the specifics of complainant's report to the NRC (TR 311).

[8] For example, in both 1992 and 1993, Zdanavage stated that complainant was above his peers in job performance. *See* EX 56, at 10; EX 57, at 10.